

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE METHYL TERTIARY BUTYL ETHER
PRODUCTS LIABILITY LITIGATION

Master File No. 1:00-1898
MDL 1358 (SAS)

This Document Relates To:

The Honorable Shira A. Scheindlin

City of Fresno v. Chevron U.S.A. Inc., et al.
Case No. 04 Civ. 04973 (SAS)

**CERTAIN DEFENDANTS' LOCAL RULE 56.1 STATEMENT OF MATERIAL FACTS
SUBMITTED IN SUPPORT OF CERTAIN DEFENDANTS' MOTION FOR PARTIAL
SUMMARY JUDGMENT ON PLAINTIFF'S NUISANCE CLAIMS**

Pursuant to Local Civil Rule 56.1(a) of the Local Rules of the Southern District of New York, Defendants Chevron U.S.A. Inc.; Shell Oil Company, Equilon Enterprises LLC, and Texaco Refining and Marketing Inc. (the "Shell Defendants"); Valero Marketing and Supply Company, and Valero Refining Company-California, (collectively, "Defendants") respectfully submit the following Statement of Material Facts in Support of Certain Defendants' Motion for Partial Summary Judgment on Plaintiff's Nuisance Claims (the "Motion").

A. RELEVANT PROCEDURAL HISTORY

1. The City of Fresno ("City") filed this lawsuit on October 22, 2003. (Declaration of Jeremiah J. Anderson in Supp. of Certain Defendants' Motion for Partial Summary Judgment ("Anderson Decl."), filed concurrently herewith, Ex. 1, Fresno's Original Compl., filed Oct. 22, 2003.)

2. The City filed a First Amended Complaint on October 28, 2004. (Fresno First Am. Compl., Oct. 28, 2004 [Docket No. 4 (Case No. 04-CV-4973-SAS)] ("FAC").)

3. As a result of the hearing on January 11, 2013, the Court directed the City to provide Defendants with the theory and supporting documentation of affirmative conduct to

support its claim of nuisance as to each station and defendant by February 8, 2013. (Anderson Decl., Ex. 2, Jan. 11, 2013 Tr. at 26, 30, 32-33, 38.) The Court further directed the parties to meet and confer by February 22, 2013 to determine whether any issues could be resolved without a motion. (*Id.*)

4. On February 8, 2013, the City identified a number of stations and defendants for which it was abandoning its nuisance claim. (*See* Anderson Decl., Ex. 3, Feb. 8, 2013 letter.) The City further set forth the evidence that it relies upon to support its nuisance claim regarding the stations and defendants at issue in this Motion. (*Id.*) Defendants dispute the facts alleged by the City in its February 8 letter. Defendants are simply referencing the letter here for the limited purpose to establish what the City is claiming. The City's letter is not substantive evidence. Since February 8, 2013, the parties have met and conferred and the City has dropped its nuisance claim at additional stations and against additional defendants. (Anderson Decl., ¶ 4.)

5. Defendants' Motion involves only those sites for which an agreement to dismiss nuisance could not be reached and for which Defendants are not moving based on the Court's prior holding in *In re MTBE Prods. Liab. Litig.*, 824 F. Supp. 2d 524, 542 (S.D.N.Y. 2011). The "Sites at Issue" are:

Station Name and Address	Moving Defendant(s)
Van Ness Auto, 2740 North Van Ness	Chevron U.S.A. Inc.
M & S Texaco, 2619 S. East Avenue	Shell Defendants
"Exxon" Service Station, 4594 E. Tulare Street	Valero Marketing and Supply Company ("VMSC"), Valero Refining Company—California ("VRC-CA")
Valley Gas, 2139 South Elm Street	VMSC, VRC-CA
Beacon #3519, 4591 E. Belmont Avenue	VMSC, VRC-CA
Beacon-Arco #615, 1625 Chestnut Avenue	VMSC, VRC-CA

B. VAN NESS AUTO—2740 NORTH VAN NESS

6. Van Ness Auto has not had a contractual relationship with Chevron U.S.A. Inc. since August 1986. (*See* Anderson Decl., Ex. 4, F. Soler Decl. at ¶ 3; Anderson Decl., Ex. 5, Clements Dep. at 26:18-23, .) Chevron-refined gasoline containing MTBE was not delivered to Van Ness Auto until 1990. (Anderson Decl., Ex. 4, F. Soler Decl. at ¶ 3.)

7. Since 1986, the site and underground storage tanks have been owned and operated by either James Clements (1986 – 1991) or Garabed Bedirian and his daughter (1991 – 1998). (Anderson Decl., Ex. 5, Clements Dep. at 15:9 – 16:18; Anderson Decl., Ex. 5, Bedirian Dep. at 13:23 – 14:15.) Prior to 1986, the station owner and operator was an independent businessman, and Mr. Bedirian also testified that he was an independent businessman. (Anderson Decl., Ex. 4, Dealer Supply Contract at 3, ¶ 5; Anderson Decl., Ex. 5, Bedirian Dep. at 73:7-9.)

8. Mr. Bedirian testified that the underground tanks were removed in 1998 and the gasoline station was closed. (Anderson Decl., Ex. 5, Bedirian Dep. at 14:13-15:4.)

9. Between August 1986 and 1999, Chevron supplied gasoline to a jobber that may have delivered Chevron-refined gasoline to this station, although again, there was no contractual relationship between the station and Chevron U.S.A. Inc. (*See* Anderson Decl., Ex. 4, F. Soler Decl. at ¶ 3.) While Mr. Clements owned and operated the station, a jobber called R.V. Jensen & Company supplied the station. (Anderson Decl., Ex. 5, Clements Dep. at 25:8-21.) Likewise, while Mr. Bedirian owned and operated the station, he obtained gasoline only from R.V. Jensen. (Anderson Decl., Ex. 5, Bedirian Dep. at 72:25-73:6.) After Chevron sold gasoline to R.V. Jensen, Chevron no longer owned the gasoline and did not have control over where the gasoline was delivered. (Anderson Decl., Ex. 4, Soler Decl. at ¶ 3.)

10. Chevron U.S.A. Inc. never owned the real estate, underground storage tanks , or the station at 2740 North Van Ness. (*See* Anderson Decl., Ex. 4, F. Soler Decl. at ¶ 3.) Nor did Chevron U.S.A. Inc. operate the station at 2740 North Van Ness. (*See* Anderson Decl., Ex. 4, F. Soler Decl. at ¶ 3.) To the extent that any Chevron representative ever visited the station at 2740 North Van Ness during the relevant time period, those visits were to provide signage and to inspect for cleanliness. (*See* Anderson Decl., Ex. 5, Bedirian Dep. at 41:3-17.) Chevron did not inspect the gasoline dispensers at North 2740 Van Ness. (Anderson Decl., Ex. 5, Bedirian Dep. at 42:15-21; *see also* 73:7-20.)

C. M&S TEXACO—2619 S. EAST AVENUE

11. M&S Texaco operated the service station located at 2619 South East Avenue. (Anderson Decl., Ex. 6, Dhillon Dep. at 17:4-21; 37:11-25.) M&S Texaco was solely owned by Jatinder Paul Dhillon of Fresno, California, who purchased the business that ran the station in 1995 or 1996. (Anderson Decl., Ex. 6, Dhillon Dep. at 17:7-16; 143:25-144:16.) The service station real estate is owned by a trust controlled by Glen and Shirley Prickett of Fresno, California. (Anderson Decl., Ex. 6, Dhillon Dep. at 44:4-22; 99:4-20.) Mr. Dhillon leased the station property from the Pricketts, and had a supply contract with Texaco. (Anderson Decl., Ex. 6, Dhillon Dep. at 49:15-50:20.) Mr. Dhillon stopped operating the station in January 2009. (Anderson Decl., Ex. 6, Dhillon Dep. at 36:13-20.)

12. Currently, the station is operated by Fleet Card Fuels, Inc., of Bakersfield, California. (*See, e.g.*, Anderson Decl., Ex. 7, ASR Engineering, Inc., Semi-Annual Groundwater Monitoring and Wastewater Drum Disposal Documentation Report, Fall 2009 and Spring 2010, M&S Texaco, 2619 S. East Avenue, Fresno, California, May 10, 2010.)

13. The underground storage tanks and piping on the M&S Texaco property were owned by the landlord, the Pricketts, and the Pricketts paid to have the tanks upgraded in 1997. (Anderson Decl., Ex. 6, Dhillon Dep. at 43:22-45:25; 71:1-72:16.) Mr. Dhillon believes that he initially owned the dispensers, but after the dispensers were replaced they became the landlord's property. (Anderson Decl., Ex. 6, Dhillon Dep. at 46:1-18.)

14. During the entire relevant time frame, the station was Texaco-branded. (*See* Anderson Decl., Ex. 6, Shell Defendants' Response to City of Fresno's First Set of Interrogatories, Exh. B at p. 8.)

15. The supply contract was the sole business relationship that M&S had with either Shell or Texaco. (Anderson Decl., Ex. 6, Dhillon Dep. at 144:17-145:8.)

16. Neither Shell nor Texaco ever owned the station property or the business that operated the station. (Anderson Decl., Ex. 6, Dhillon Dep. at 145:10-23), and neither Shell nor Texaco ever operated the station. (Anderson Decl., Ex. 6, Dhillon Dep. at 146:2-4.)

17. Mr. Dhillon made all decisions on whom to hire and fire, and he understood that he was responsible for complying with all laws involving the operations of the station. (Anderson Decl., Ex. 6, Dhillon Dep. at 146:5-20.)

18. Mr. Dhillon instructed his employees on how to respond to leaks and spills of gasoline, and he testified that he was responsible for cleaning up spills. (Anderson Decl., Ex. 6, Dhillon Dep. at 30:20-31:5; 147:1-8.)

19. Mr. Dhillon was responsible for maintenance of the gasoline nozzles and dispensers at the station (Anderson Decl., Ex. 6, Dhillon Dep. at 37:5-10), and Mr. Dhillon was also responsible for conducting tightness tests on the underground storage tanks. (Anderson Decl., Ex. 6, Dhillon Dep. at 53:10-54:2.) The Central Valley Regional Water Quality Control

Board considered Mr. Dhillon the responsible party for the station and addressed all correspondence pertaining to the site investigation and remedial action at the station, including the No Further Action Required letter, to Mr. Dhillon. (Anderson Decl., Ex. 7, Letter from CVRWQCB to Paul Dhillon dated 20 March 2012.)

D. “EXXON” SERVICE STATION—4594 E. TULARE

20. Valero Marketing and Supply Company (“VMSC”) and Valero Refining Company-California (“VRC-CA”) (collectively, “Valero”) did not begin business in the State of California until March 16, 2000. (Anderson Decl., Ex. 8, Declaration of Ethan Jones (“E. Jones Decl.”) at ¶¶ 4, 6.) VMSC and VRC-CA are subsidiaries of Valero Energy Corporation. (Anderson Decl., Ex. 8, E. Jones Decl. at ¶ 3.) Neither VMSC nor VRC-CA have ever manufactured equipment used for the distribution, handling, storage, dispensing or sale of gasoline products. (Anderson Decl., Ex. 8, E. Jones Decl. at ¶ 8.)

21. Ultramar Inc. is a Nevada corporation with operations primarily in Wilmington, California. (Anderson Decl., Ex. 8, E. Jones Decl. at ¶ 14.) On December 3, 1996, Ultramar Corporation merged with Diamond Shamrock, Inc. to form Ultramar Diamond Shamrock Corporation. (Anderson Decl., Ex. 8, E. Jones Decl. at ¶ 15.) After this merger, Ultramar Inc. continued in existence as a subsidiary of Ultramar Diamond Shamrock Corporation. (*Id.*) On December 31, 2001, Ultramar Diamond Shamrock Corporation merged with and into Valero Energy Corporation. (Anderson Decl., Ex. 8, E. Jones Decl. at ¶ 16.) At that time, Ultramar Inc. became a subsidiary of Valero Energy Corporation. (*Id.*) Ultramar Inc., VMSC, and VRC-CA have continued to operate as subsidiaries of Valero Energy Corporation since December 31, 2001. (Anderson Decl., Ex. 8, E. Jones Decl. at ¶ 17.)

22. Ultramar Inc. did not merge with or into VMSC. (Anderson Decl., Ex. 8, E. Jones Decl. at ¶ 18) . With respect to the Exxon Service Station, Valley Gas, Beacon #3519, and Beacon-ARCO #615 sites, Ultramar Inc. has not transferred or assigned any liabilities, obligations, or property to VMSC, nor has VMSC assumed or received any liabilities, obligations, or property from Ultramar Inc. (*Id.*) Ultramar Inc. did not merge with or into VRC-CA. (Anderson Decl., Ex. 8, E. Jones Decl. at ¶ 19.) With respect to the “Exxon” Service Station, Valley Gas, Beacon #3519, and Beacon-ARCO #615 sites, Ultramar Inc. has not transferred or assigned any liabilities, obligations or property to VRC-CA, nor has VRC-CA assumed or received any liabilities, obligations or property from Ultramar Inc. (*Id.*) Ultramar Inc. continues to exist and conduct business as of the date of March 15, 2013. (Anderson Decl., Ex. 8, E. Jones Decl. at ¶ 20.) Thus, neither VMSC nor VRC-CA are successors-in-interest to Ultramar Inc. (*Id.*)

23. Dan Martin testified that the Martinoil Company (“Martinoil”) built the station at 4594 E. Tulare in approximately 1984 and then turned over the property and business in approximately 1985 to Ultramar (referred to as “Beacon”). (Anderson Decl., Ex. 10, Martin Dep. at 26:11-25, 32:7-12, 48:16-20, 50:14-55:10; Anderson Decl., Ex. 9, Valero Defendants’ Responses to Plaintiff City of Fresno’s First Set of Interrogatories to Defendants (“Valero’s Responses to First Set of Interrogatories”), 11/5/08, Rog No. 3, pp. 7-8.)

24. Ultramar, Inc. leased and operated the station from 1985-1995. (Anderson Decl., Ex. 9, Valero’s Responses to First Set of Interrogatories, 11/5/08, Rog. No. 3, pp. 7-8.)

25. Martinoil sold the property and the business to El Monte Gas Company in approximately 1995. (Anderson Decl., Ex. 10, Martin Dep. at 58:3-59:10; Anderson Decl., Ex. 9, Doyle Dep, at 12:24-13:7, 18:12-22.)

26. El Monte leased the property to Narinder Singh and his wife Kanta, who operated the station with their business partners. (Anderson Decl., Ex. 9, Doyle Dep. at 17:7-18:8; Anderson Decl., Ex. 9, N. Singh Dep. at 23:21-24:2; 31:23-32:11.)

27. In 1999, El Monte sold the property and the business to Narinder Singh and his partners, who have owned and operated the station ever since. (Anderson Decl., Ex. 9, Doyle Dep. at 18:12-22, 21:3-24; Anderson Decl., Ex. 9, N. Singh Dep. at 20:18-21:16, 22:18-23:11.)

28. Neither VMSC nor VRC-CA have ever owned, leased or operated the retail gas station or real estate located at 4594 E. Tulare. (Anderson Decl., Ex. 8, E. Jones Decl. at ¶ 11.)

E. VALLEY GAS—2139 SOUTH ELM

29. Ultramar Inc. owned the Valley Gas station until October 29, 1991. (Anderson Decl., Ex. 11, Ahmad Dep. at 20:5-20; 23:12-22). In 1991, an entity known as Petro Group II purchased the station from Ultramar Inc., and later sold the station to a third party. (Anderson Decl., Ex. 11, Ahmad Dep. at 20:5-20; 23:12-22; 41:16-43:3.)

30. Neither VMSC nor VRC-CA have ever owned, leased or operated the retail gas station or real estate located at 2139 South Elm Avenue. (Anderson Decl., Ex. 8, E. Jones Decl. at ¶ 9.)

F. BEACON #3519—4591 E. BELMONT AVE.

31. The Beacon #3519 station was leased from Irene Arney by Beacon/Ultramar Inc. from March 1, 1971 until October 20, 1999. (Anderson Decl., Ex. 12, Valero's Responses to First Set of Interrogatories, 11/5/08, Rog. No. 3, p. 7; Anderson Decl., Ex. 12, VLO-FRESNO-0010453, Beacon Oil Company Intra-Company Memorandum (Dec. 3, 1971).) Ultramar Inc. assigned its rights in the lease to Gasamat Oil Corp. of Colorado ("Gasamat") on October 20, 1999, but retained a remediation agreement. (Anderson Decl., Ex. 12, VLO-FRESNO-0010454,

Email from Debbie Dirks to Julie Johns (Jan. 29, 2001).) Ultramar Inc. sold its assets and improvements at Beacon #3519 to Gasamat at that time, as well. (Anderson Decl., Ex. 12, VLO-FRESNO-0010455, Ultramar Diamond Shamrock Corp. Memorandum (March 1, 2000).)

32. In 2001, Gasamat assigned its interest in the lease and sold its assets and improvements at Beacon #3519 to Nirmal Gill. (Anderson Decl., Ex. 12, FCDEH-FRESNO-017903, Facsimile from Tim Mullen, Gasamat Oil Corp. to Ted, Fresno County Environmental (Aug. 27, 2002).) Nirmal Gill and his partner Navdeep “Gary” Singh began operating the ARCO-branded station on January 10, 2002 and have been operating it continually since that time. (Anderson Decl., Ex. 12, G. Singh Dep. at 9:6-17; 20:21-21:11; 84:9-17).) Mr. Singh testified that he and Nirmal Gill own the station and equipment at the site, while the physical property is owned by Melvin Armev. (Anderson Decl., Ex. 12, G. Singh Dep. at 9:19-10:1).)

33. Neither VMSC nor VRC-CA have ever owned, leased or operated the retail gas station or real estate located at 4591 E. Belmont Ave. (Anderson Decl., Ex. 8, E. Jones Decl. at ¶ 12.)

G. BEACON-ARCO #615, 1625 CHESTNUT AVE.

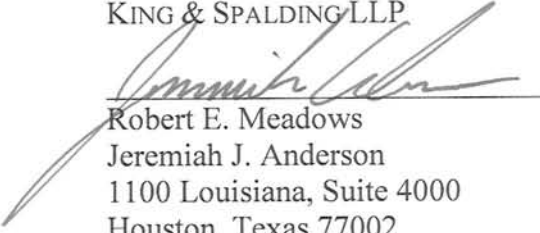
34. The Martinoil Company (“Martinoil”) has owned Beacon-ARCO #615 since the 1980s. (Anderson Decl., Ex. 10, Martin Dep. at 22:22-24:23.) On November 29, 1984, Martinoil sold and assigned its rights, obligations, and interests under the Franchise Agreement to Beacon, but retained ownership of Beacon-ARCO #615. (Anderson Decl., Ex. 10, Martin Dep. at 40:12-14; 41:20-44:13; Anderson Decl., Ex. 13, MARTIN_FRESNO-0001, Handwritten Notes of Dan Martin (undated).) Beacon began leasing Beacon-ARCO #615 from Martinoil in or around November 1984. (Anderson Decl., Ex. 13, MARTIN_FRESNO-0001, Handwritten Notes of Dan Martin (undated).)

35. Neither VMSC nor VRC-CA have ever owned, leased or operated the retail gas station or real estate located at 1625 Chestnut Ave. (Anderson Decl., Ex. 8, E. Jones Decl. at ¶ 10.)

Dated: March 15, 2013

Respectfully submitted,

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DEFENDANTS JOINING LOCAL RULE 56.1 STATEMENT OF MATERIAL FACTS

CHEVRON U.S.A. INC.

SHELL OIL COMPANY

EQUILON ENTERPRISES LLC

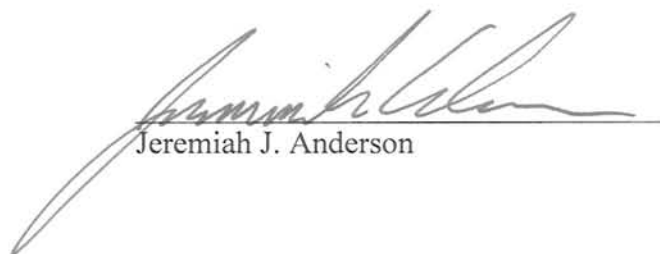
TEXACO REFINING AND MARKETING INC.

VALERO MARKETING AND SUPPLY COMPANY

VALERO REFINING COMPANY-CALIFORNIA

Certificate of Service

I hereby certify that on the 15th day of March 2013, a true, correct, and exact copy of the foregoing document was served on all counsel via LexisNexis File & Serve.



Jeremiah J. Anderson